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## **DEPARTMENT OF HOMELAND SECURITY**

### **Office of the Secretary**

#### **6 CFR Part 5**

**[Docket No. DHS-2018-0014]**

### **Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Immigration and Customs Enforcement-007 Criminal History and Immigration Verification (CHIVe) System of Records**

**AGENCY:** Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) is giving concurrent notice of a modified, renamed, and reissued system of records pursuant to the Privacy Act of 1974 for the “Department of Homeland Security/U.S. Immigration and Customs Enforcement-007 Alien Criminal Response Information Management System of Records” and this proposed rulemaking. In this proposed rulemaking, the Department proposes to rename the system Criminal History and Immigration Verification, and exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by docket number DHS-2018-0014, by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Philip S. Kaplan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

*Instructions:* All submissions received must include the agency name and docket number DHS-2018-0014. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact:

Amber Smith, (202-732-3300), [ICEPrivacy@ice.dhs.gov](mailto:ICEPrivacy@ice.dhs.gov), Privacy Officer, U.S.

Immigration and Customs Enforcement, 500 12<sup>th</sup> Street SW, Washington, D.C. 20536.

For privacy issues please contact: Philip S. Kaplan, [Privacy@hq.dhs.gov](mailto:Privacy@hq.dhs.gov), (202-343-1717), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background:**

In accordance with the Privacy Act of 1974, 5 U.S.C. sec. 552a, DHS U.S. Immigration and Customs Enforcement (ICE) proposes to modify, rename, and reissue a current DHS Privacy Act system of records notice (SORN) titled, “DHS/ICE-007 Alien Criminal Response Information Management (ACRIMe)” 78 FR 10623 (Feb. 14, 2013). ICE had previously issued a Final Rule for this SORN on Aug. 31, 2009, published at 74

FR 45079. As a result of the modifications to this SORN, DHS/ICE is proposing to issue this new rule.

DHS/ICE update to ACRIME includes several changes. First, the system of records is being renamed “Criminal History and Immigration Verification (CHIVe)” to better align with the purpose of the system. This system of records covers records documenting inquiries received from federal, state, and local law enforcement agencies so ICE can check the immigration status and criminal history of individuals who are arrested or otherwise encountered by those agencies; and other federal agencies for screening (including as part of background checks being conducted by those agencies) to inform those agencies’ determinations regarding suitability for employment, access, sponsorship of an unaccompanied alien child, or other purposes or otherwise encountered by those agencies.

Second, DHS is adding a purpose of the system, as ICE will now screen individuals seeking approval from the Department of Health and Human Services (HHS) to sponsor an unaccompanied alien child, as well as other adult members of the potential sponsor’s household, to verify or ascertain citizenship or immigration status, immigration history, and criminal history.

Third, DHS is clarifying that the Department may use information maintained in this system of records for other purposes consistent with its statutory authorities.

Fourth, this update adds a new category of individuals: those seeking approval from HHS to sponsor an unaccompanied alien child and/or other adult members of the potential sponsor’s household.

Fifth, DHS is adding one category of records to include biometrics for potential

sponsors and/or other adult members of the potential sponsor's household. DHS has also modified a category of records to include citizenship or immigration status and criminal and immigration history information for sponsorship of unaccompanied alien children.

Sixth, DHS is adding one new routine use that would allow ICE to share from this system of records the results of screening of potential sponsors and adult members of their households with HHS to inform HHS's determination whether to grant sponsor applications. DHS is also modifying routine use (E) and adding routine use (F) to conform to Office of Management and Budget (OMB) Memorandum M-17-12 "Preparing for and Responding to a Breach of Personally Identifiable Information" (Jan. 3, 2017).

Seventh, DHS is revising the records retention periods so that they align with the records retention schedule approved by the National Archives and Records Administration (NARA).

Finally, DHS is modifying this SORN since this system will no longer store information pertaining to the collection, processing, and response to public tip information concerning customs and immigration violations, suspicious activity, or other law enforcement matters. ICE will continue to collect information about individuals reporting tips, the subjects of such tips, and any information ICE collects in following up on a tip in the DHS/ICE-016 FALCON Search and Analysis System of Records, 82 FR 20905 (May 4, 2017).

As a result, the following changes are being made: (1) two categories of individuals are being removed from the system – individuals who report tips and individuals about whom those reports are made; (2) two categories of records are being

removed from the system - those public tip records, which consist of information contained in tips received from the public or other sources regarding customs and immigration violations, other actual or potential violations of law, and suspicious activities; and also records created pertaining to ICE's follow-up activities regarding a tip; (3) one routine use is being removed from the system that allows DHS to disclose reports of suspicious activity, tips, potential violations of law, and other relevant information to external law enforcement agencies; and (4) four purposes for the collection of information are being removed from the system. Purpose (4) in the prior iteration of this SORN has been removed as it pertains to public tip records. Purposes (5), (6), and (7) have been removed since these purposes are more focused on ICE's Law Enforcement Support Center (LESC) rather than the system as a whole.

A more complete description of the changes to this SORN can be found in the publication of this modified SORN found elsewhere in the *Federal Register*. Further, this modified system of records and rule will be included in DHS's inventory of record systems.

## II. Privacy Act:

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is

defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides a statutory right to covered persons to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

The Privacy Act allows government agencies to exempt certain records from portions of the Act. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ICE-007 Criminal History and Immigration Verification (CHIVe) System of Records. Some information in DHS/ICE-007 Criminal History and Immigration Verification (CHIVe) System of Records relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A SORN for DHS/ICE-007 Criminal History and Immigration Verification (CHIVe) System of Records is also published in this issue of the *Federal Register*.

#### **List of Subjects in 6 CFR Part 5**

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

#### **PART 5--DISCLOSURE OF RECORDS AND INFORMATION**

1. Revise the authority citation for Part 5 to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. In Appendix C to Part 5, revise paragraph 28. to read as follows:

#### **Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act**

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28. The DHS/ICE-007 Criminal History and Immigration Verification (CHIVe) System of Records covers electronic and paper records and will be used by DHS and its components. The DHS/ICE-007 Criminal History and Immigration Verification (CHIVe) System of Records covers information held by DHS/ICE in connection with its several and varied missions and functions, including, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/ICE-007 Criminal History and Immigration Verification

(CHIVe) System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

- (a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.
- (b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual



or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. From subsection (d) (Amendment to Records) because permitting amendment of records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a

confidential investigation or reveal the identity of witnesses or confidential informants.

- (f) From subsections (e)(4)(G), (e)(4)(H), (e)(4)(I), (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.
- (g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.
- (h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

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Philip S. Kaplan  
Chief Privacy Officer,  
Department of Homeland Security.

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